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| **Human Resources** | **HR39 Shared Parental Leave Policy** |

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| **Version Number** | **Date Issued**  | **Review Date** |
| **1.0** | July 2022 | July 2024 |

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| **Prepared By:** | Beth Coombes |
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**EQUALITY IMPACT ASSESSMENT**

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| **Date** | **Issues** |
|  | To be completed, as outlined in the agreed 2022/23 HR EIA review schedule. |

**POLICY VALIDITY STATEMENT**

Policy users should ensure that they are consulting the currently valid version of the documentation. The policy will remain valid, including during its period of review. However, the policy must be reviewed at least once in every 3-year period.

**ACCESSIBLE INFORMATION STANDARDS**

If you require this document in an alternative format, such as easy read, large text, braille or an alternative language please contact necsu.icbhr@nhs.net

**Version Control**

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# **Part 1 Policy**

## **Introduction**

1. The organisation will comply with both the spirit and the letter of the law in ensuring that all employees have a robust system to assist them in achieving their shared parental rights. It is recognised that the provision of maternity, paternity, adoption and shared parental leave is key to being able to demonstrate this commitment.

## **Purpose**

1. The purpose of this policy is to provide managers and employees with information and guidance about entitlements to shared parental leave relating to conditions of service, and to provide the basis for a clear understanding of the nature and period of leave, paid and unpaid, that will apply in particular circumstances.

## **Policy Statement**

1. The organisation will ensure that all employees are assisted in achieving shared parental leave and have provided the following leave arrangements for employees to ensure that they are fully able to manage their family lives outside of work and are committed to promoting fair and equal treatment inside the workplace.

## **Responsibilities**

**4.1 Responsibilities of the Organisation**

The responsibility for the provision of maternity, paternity and adoption leave and pay rests initially with the organisation. The organisation recognises the need to treat all employees fairly by providing equality of opportunity in employment, development, promotion and retention of skills and experience.

**4.2 Responsibilities of HR**

HR will ensure that training is provided on this policy to ensure that a fair and consistent approach is applied by Managers. HR will guide managers and staff on the application of this process. Information and training opportunities will be widely publicised and the take up of such opportunities monitored.

**4.3 Responsibilities of Line Managers**

Line managers are responsible for ensuring that this policy is applied fairly and consistently within their own area. HR will monitor and provide any feedback to managers, providing advice and support where appropriate. Managers should also ensure that employees are made aware of this policy when applicable and understand their entitlements to maternity, paternity and adoption leave and pay.

Line managers should ensure that requests are dealt with reasonably and considered sensitively and dealt with as a matter of urgency and are responsible for submitting the information to HR in a timely manner to ensure that accurate payment is made.

**4.4 Responsibilities of Employees**

Employees should understand the application of this policy and have a general understanding of their statutory and contractual entitlements. Employees are responsible for informing their managers in a timely manner (in line with the timescales stated in this policy) should they wish to take maternity, paternity or adoption leave.

**4.5 Responsibilities of Staff Side**

Staff side will provide independent advice and support to staff on maternity, paternity, adoption and shared parental leave and pay related concerns/queries.

## **Scope**

This policy applies to all eligible employees of the organisation who have babies and their Expected Week of Childbirth (EWC) is on or after 5th April 2015 and for children who are placed for adoption on or after that date. Please note it is the EWC or the anticipated matching date that is relevant, rather than the actual birth or placement date.

## **Equality Statement**

In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

An Equality Impact Analysis has been carried out on this policy and can be found in appendix 1.

## **Monitoring and Review**

The policy and procedure will be reviewed periodically by HR in conjunction with operational managers and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.

## **8.** **Associated Documentation**

The following documentation is linked to this policy:

* HR17 Maternity Leave Policy
* HR03 Adoption Leave Policy
* HR22 Paternity Leave Policy
* HR07 Disciplinary Policy
* HR37 Incremental Pay Progression Policy

# **Part 2 Procedure**

## **What is Shared Parental Leave?**

1. Shared Parental Leave (SPL) enables eligible parents to choose how to share the care of their child during the first year following birth or adoption. Its purpose is to give parents more flexibility in considering how to best care for their child. All eligible employees have a statutory right to take Shared Parental Leave. There may also be an entitlement to Shared Parental Pay, this may be enhanced pay or statutory pay. This policy sets out the rights and responsibilities of employees who wish to take Shared Parental Leave and Shared Parental Pay (ShPP). [Based upon their entitlements to SPL and ShPP.]
2. The organisation recognises that, from time to time, employees may have questions or concerns relating to their shared parental rights. It is the organisation's policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible.

## **Eligibility**

1. SPL can only be used by two people:
* The mother/adopter and One of the following:
* the father of the child (in the case of birth)

or

* The spouse, civil partner or partner of the child's mother/ adopter.
1. Both parents must share the main responsibility for the care of the child at the time of the birth/placement for adoption.
2. Additionally an employee seeking to take SPL must satisfy each of the following criteria:
* the mother/adopter of the child must be/have been entitled to statutory maternity/adoption leave or if not entitled to statutory maternity/adoption leave they must be/have been entitled to statutory maternity/adoption pay or maternity allowance and must have ended or given notice to reduce any maternity/adoption entitlements;
* the employee must still be working for the organisation at the start of each period of SPL;
* the employee must pass the ‘continuity test’ requiring them to have a minimum of 26 weeks' service at the end of the 15th week before the child’s expected due date/matching date;
* the employee’s partner must meet the ‘employment and earnings test’ requiring them in the 66 weeks leading up to the child’s expected due date/matching date have worked for at least 26 weeks and earned an average of at least £30 (this is correct as of 2015 but may change annually) a week in any 13 of those weeks;
* The employee must correctly notify their Line Manager of their entitlement and provide evidence as required.

## **Entitlement**

1. Eligible employees may be entitled to take up to 50 weeks SPL during the child’s first year in their family. The number of weeks available is calculated using the mother’s/adopter’s entitlement to maternity/adoption leave, which allows them to take up to 52 weeks’ leave. If they reduce their maternity/adoption leave entitlement then they and/or their partner may opt-in to the SPL system and take any remaining weeks as SPL.
2. A mother/adopter may reduce their entitlement to maternity/adoption leave by returning to work before the full entitlement of 52 weeks has been taken, or they may give notice to curtail their leave at a specified future date.
3. If the mother/adopter is not entitled to maternity/adoption leave but is entitled to Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) or Maternity Allowance (MA), they must reduce their entitlement to less than the 39 weeks. If they do this, their partner may be entitled to up to 50 weeks of SPL. This is calculated by deducting from 52 the number of weeks of SMP, SAP or MA taken by the mother/adopter.
4. SPL can commence as follows:
* The mother can take SPL after she has taken the legally required two weeks of maternity leave immediately following the birth of the child
* The adopter can take SPL after taking at least two weeks of adoption leave
* The father/partner/spouse can take SPL immediately following the birth/placement of the child, but may first choose to exhaust any paternity leave entitlements (as the father/partner cannot take paternity leave or pay once they have taken any SPL or ShPP). Please see Maternity, Paternity and Adoption Pay and Leave Policy for further details.
1. Where a mother/adopter gives notice to curtail their maternity/adoption entitlement then the mother/adopter’s partner can take leave while the mother/adopter is still using their maternity/adoption entitlements. Please note where the mother/adopter curtails their leave; this will draw an end to any occupational maternity entitlements which are still in place at the time of the curtailment.
2. SPL will generally commence on the employee's chosen start date specified in their leave booking notice, or in any subsequent variation notice (see "Booking Shared Parental Leave" and "Variations to arranged Shared Parental Leave" below).
3. If the employee is eligible to receive it, Shared Parental Pay (ShPP) may be paid for some, or all, of the SPL period (see "Shared Parental Pay" below).
4. SPL must end no later than one year after the birth/placement of the child. Any SPL not taken by the first birthday or first anniversary of placement for adoption is lost.

## **Notification of Shared Parental Leave**

1. An employee entitled and intending to take SPL must give their line manager notification of their entitlement and intention to take to SPL, at least eight weeks before they can take any period of SPL.
2. Part of the eligibility criteria requires the employee and the employee’s partner to provide the organisation with the correct notification. This notification must be provided as a signed declaration utilising the Notification of Shared Parental Leave form in Appendix 2.

## **Requesting Further Evidence of Eligibility**

1. The organisation may, within 14 days of the SPL entitlement notification being given, request:
* the name and business address of the partner’s employer (where the employee’s partner is no longer employed or is self-employed their contact details must be given instead)
* in the case of biological parents, a copy of the child's birth certificate (or, where one has not been issued, a declaration as to the time and place of the birth).
* in the case of an adopted child, documentary evidence of the name and address of the adoption agency, the date on which they were was notified of having been matched with the child and the date on which the agency expects to place the child for adoption
* In order to be entitled to SPL, the employee must produce this information within 14 days of any request by the organisation representatives.

## **Fraudulent Claims**

1. The organisation can, where there is a suspicion that fraudulent information may have been provided or where the organisation has been informed by the HMRC that a fraudulent claim was made, investigate the matter further in accordance with the Disciplinary Policy and Procedures, and also without acting in a discriminatory manner in relation to any of the protected characteristics defined in the Equality Act 2010.

## **Discussions Regarding Shared Parental Leave**

1. An employee considering/taking SPL is encouraged to contact their Line Manager to arrange an informal discussion as early as possible regarding their potential entitlement, to talk about their plans and to enable the organisation to support the individual.
2. The line manager may upon receiving a notification of entitlement to take SPL seek to arrange an informal discussion with the employee to talk about their intentions and how they currently expect to use their SPL entitlement.
3. Upon receiving a leave booking notice the Line Manager will usually arrange a meeting to discuss it. Where a notice is for a single period of continuous leave, or where a request for discontinuous leave can without further discussion be approved in the terms stated in the employee's notice booking leave, a meeting may not be necessary.
4. Where a meeting is arranged it should take place in private and be arranged in advance. If the initial date is problematic then another date will be arranged if possible. If an alternative date cannot be arranged then the meeting may be held over the telephone.
5. At the meeting the employee may, if they wish, be accompanied by a workplace colleague or a trade union representative.
6. The purpose of the meeting is to discuss in detail the leave proposed and what will happen while the employee is away from work. Where it is a request for discontinuous leave the discussion may also focus on how the leave proposal could be agreed, whether a modified arrangement would be agreeable to the employee and the department, and what the outcome may be if no agreement is reached.

## **Booking Shared Parental Leave**

1. In addition to notifying the organisation of entitlement to SPL/ShPP, an employee must also give notice to take the leave (at least 8 weeks). In many cases, notice to take leave will be given at the same time as the notice of entitlement to SPL. The form should be completed in Appendix 1 (birth) or appendix 2 (adoption).
2. The employee has the right to submit three notifications specifying leave periods they are intending to take. Each notification may contain either (a) a single period of weeks of leave; or (b) two or more weeks of discontinuous leave, where the employee intends to return to work between periods of leave.
3. SPL can only be taken in complete weeks but may begin on any day of the week. (For example if a week of SPL began on a Tuesday it would finish on a Monday. Where an employee returns to work between periods of SPL, the next period of SPL can start on any day of the week.) The employee must book SPL by giving the correct notification at least 8 weeks before the date on which they wish to start the leave and (if applicable) receive ShPP.

**Continuous leave notifications**

* A notification can be for a period of continuous leave, which means a notification of a number of weeks taken in a single unbroken period of leave (for example, six weeks in a row).
* An employee has the right to take a continuous block of leave notified in a single notification, so long as it does not exceed the total number of weeks of SPL available to them (specified in the notice of entitlement) and the employer has been given at least eight weeks’ notice.
* An employee may submit up to three separate notifications for continuous periods of leave.

**Discontinuous leave notifications**

* A single notification may also contain a request for two or more periods of discontinuous leave, which means asking for a set number of weeks of leave over a period of time, with breaks between the leave where the employee returns to work (for example, an arrangement where an employee will take six weeks of SPL and work every other week for a period of three months).
* Where there is concern over accommodating the notification, the organisation or the employee may seek to arrange a meeting to discuss the notification with a view to agreeing an arrangement that meets both the needs of the employee and the department (see “Discussions regarding Shared Parental Leave” above).
* The Line Manager will consider a discontinuous leave notification but has the right to refuse it. If the leave pattern is refused, the employee can either withdraw it within 15 days of giving it, or can take the leave in a single continuous block.

## **Responding to a Shared Parental Leave Notification**

1. Once the Line Manager receives the leave booking notice, it should be dealt with as soon as possible, but a response will be provided no later than 14 days after the leave request was made.
2. All notices for continuous leave should be confirmed in writing.
3. All requests for discontinuous leave will be carefully considered, weighing up the potential benefits to the employee and to the organisation against any adverse impact to the business.
4. Each request for discontinuous leave will be considered on a case-by-case basis. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar pattern of SPL.
5. The employee will be informed in writing of the decision as soon as is reasonably practicable, but no later than the 14th day after the leave notification was made. The request may be granted in full or in part: for example, the line manager may propose a modified version of the request.
6. If a discontinuous leave pattern is refused then the employee may withdraw the request without detriment on or before the 15th day after the notification was given; or may take the total number of weeks in the notice in a single continuous block. If the employee chooses to take the leave in a single continuous block, the employee has until the 19th day from the date the original notification was given to choose when they want the leave period to begin. The leave cannot start sooner than eight weeks from the date the original notification was submitted. If the employee does not choose a start date then the leave will begin on the first leave date requested in the original notification.

## **Variations to Arranged Shared Parental Leave**

10.1 The employee is permitted to vary or cancel an agreed and booked period of SPL, provided that they advise their Line Manager in writing at least eight weeks before the date of any variation. Any new start date cannot be sooner than eight weeks from the date of the variation request.

* 1. Any variation or cancellation notification made by the employee,

including notice to return to work early, will usually count as a new notification reducing the employee’s right to book/vary leave by one. However, a change as a result of a child being born early, or as a result of the organisation requesting it be changed, and the employee being agreeable to the change, will not count as further notification. Any variation will be confirmed in writing by the line manager.

## **Shared Parental Pay (ShPP)**

1. Eligible employees may be entitled to take up to 37 weeks ShPP while taking SPL. The amount of weeks available will depend on the amount by which the mother/adopter reduces their maternity/adoption pay period or maternity allowance period.
2. ShPP may be payable during some or all of SPL, depending on the length and timing of the leave.
3. Enhanced shared parental pay may be available if the employee has 12 month continuous service with one or more NHS employer at the beginning of the 11th week of expected childbirth, or at the beginning of the week in which they are notified of being matched with a child for adoption, or by the 15th week before the baby’s due date if applying via a surrogacy arrangement.
4. In addition to meeting the eligibility requirements for SPL, an employee seeking to claim ShPP must further satisfy each of the following criteria:
* the mother/adopter must be/have been entitled to statutory maternity/adoption pay or maternity allowance and must have reduced their maternity/adoption pay period or maternity allowance period;
* the employee must intend to care for the child during the week in which ShPP is payable;
* the employee must have an average weekly earnings for the period of eight weeks leading up to and including the 15th week before the child’s expected due date/matching date are not less than the lower earnings limit in force for national insurance contributions;
* the employee must remain in continuous employment until the first week of ShPP has begun;
* the employee must give proper notification in accordance with the rules set out below.
	1. Where an employee is entitled to receive ShPP they must, at least 8 weeks before receiving any ShPP, give their line manager written notice advising of their entitlement to ShPP. To avoid duplication, if possible, this should be included as part of the notice of entitlement to take SPL.
	2. In addition to what must be included in the notice of entitlement to take SPL, any notice that advises of an entitlement for ShPP must include:
* the start and end dates of any maternity/adoption pay or maternity allowance;
* the total amount of ShPP available, the amount of ShPP the employee and their partner each intend to claim, and a non-binding indication of when the employee expects to claim ShPP;
* a signed declaration from the employee confirming that the information they have given is correct, that they meet, or will meet, the criteria for ShPP and that they will immediately inform the organisation should they cease to be eligible.

It must be accompanied by a signed declaration from the employee’s partner confirming:

* their agreement to the employee claiming ShPP and the organisation to process any ShPP payments to the employee;
* (in the case whether the partner is the mother/ adopter) that they have reduced their maternity/adoption pay or maternity allowance;
* (in the case whether the partner is the mother/ adopter) that they will immediately inform their partner should they cease to satisfy the eligibility conditions.

**Entitlement to Occupational Shared Parental Pay under the NHS Scheme**

 An employee working full or part-time is entitled to Occupational Shared Parental Pay (OShPP) under the NHS scheme provided that they:

* have 12 months continuous service with one or more NHS employers and continues to be employed by the Organisation at the date the Shared Parental Leave will commence.
* notifies the Organisation of the intention to take Shared Parental Leave, at least 8 weeks before the leave is expected to commence and intends to return to work for a minimum period of three months with the same or another NHS employer; and

An employee who **qualifies and intends to return to work with the same or another employing authority** will be entitled to up to 37 weeks paid as follows:-

* 6 weeks at full pay including any Statutory Shared parental leave Pay.
* 18 weeks at half pay reduced only where half pay plus any Statutory Shared Parental pay benefits payable exceeds full pay;
* 13 weeks at Statutory Shared Parental leave pay

**The maximum entitlement will only apply where either parent has not already received statutory or occupational maternity pay or statutory or occupational adoption pay in respect of the child.**

An employee who **qualifies for occupational shared parental leave pay and does not intend to return to work for the same or another employing authority** will be entitled to statutory shared parental leave pay.

An employee who **does not qualify for full benefits under the NHS Scheme will be paid** ShPP due at a rate set by the Government for the relevant tax year.

An NHS employer will not pay more than 26 weeks, 8 weeks’ full pay and 18 weeks half pay, to employees accessing occupational maternity or adoption or shared parental leave pay in aggregate to an eligble couple. This is irrespective of whether one or both parents are NHS employees as shared parental leave and pay is a joint entitlement.

## **Terms and Conditions during Shared Parental Leave**

1. During the period of SPL, the employee's contract of employment continues in force and they are entitled to receive all their contractual benefits, except for salary. In particular, any benefits in kind (such as use of a lease car, laptop, mobile phone) will continue and contractual annual leave entitlement will continue to accrue.
2. Pension contributions will continue to be made during any period when the employee is receiving ShPP but not during any period of unpaid SPL. Employee contributions will be based on actual pay, while the organisation’s contributions will be based on the salary that the employee would have received had they not been taking SPL.

## **Annual Leave**

SPL is granted in addition to an employee's normal annual holiday entitlement. Employees are reminded that holiday should wherever possible be taken in the year that it is earned. Where an SPL period overlaps two leave years the employee should consider how their annual leave entitlement can be used to ensure that it is not untaken at the end of the employee’s holiday year. See Annual Leave Policy for further information.

## **Contact during Shared Parental Leave**

Before an employee's SPL begins, the Line Manager will discuss the arrangements for them to keep in touch during their leave. The organisationnreserves the right in any event to maintain reasonable contact with the employee from time to time during their SPL. This may be to discuss the employee's plans to return to work, to ensure the individual is aware of any possible promotion opportunities, to discuss any special arrangements to be made or training to be given to ease their return to work or simply to update them on developments at work during their absence.

## **Shared Parental Leave in Touch Days**

1. An employee can agree to work for the organisation (or attend training) for up to 20 days during SPL without bringing their period of SPL to an end or impacting on their right to claim ShPP for that week. These are known as "Shared Parental Leave In Touch" or "SPLIT" days. Any work carried out on a day or part of a day shall constitute a day's work for these purposes.
2. The organisation has no right to require the employee to carry out any work, and is under no obligation to offer the employee any work, during the employee’s SPL. Any work undertaken is a matter for agreement between the organisation and the employee. SPLIT days will be paid at an employee’s basic pay rate for the hours worked less any occupational or statutory shared parental leave pay. Where an employee works a SPLIT day during the full occupational shared parental leave pay period, they will receive a full day in lieu off notice upon their return to work. Where an employee works a SPLIT day during the half occupational shared parental leave pay period, they will receive a half day pay in lieu of notice to be taken upon their return to work. Where an employee works a SPLIT day during the statutory pay or nil pay period, the employee will receive payment for the hours worked at their usual basic rate, less statutory pay.
3. An employee may take up to twenty SPLIT days without bringing the period of Shared Parental Leave to an end. Any SPLIT days worked do not extend the period of SPL.
4. An employee, with the agreement of their Line Manager, may use SPLIT days to work part of a week during SPL. The Line Manager and the employee may use SPLIT days to affect a gradual return to work by the employee towards the end of a long period of SPL or to trial a possible flexible working pattern.

## **Returning to Work After Shared Parental Leave**

1. The employee will have been formally advised in writing by their Line Manager of the end date of any period of SPL. The employee is expected to return on the next working day after this date, unless they notify the organisation otherwise. If they are unable to attend work due to sickness or injury, the organisation's normal arrangements for sickness absence will apply. In any other case, late return without prior authorisation will be treated as unauthorised absence.
2. If the employee wishes to return to work earlier than the expected return date, they may provide a written notice to vary the leave and must give their Line Manager at least eight weeks’ notice of their date of early return. This will count as one of the employee’s notifications. If they have already used their three notifications to book and/or vary leave then the organisation does not have to accept the notice to return early but may do if it is considered to be reasonably practicable to do so.
3. On returning to work after SPL, the employee is entitled to return to the same job if the employee’s aggregate total statutory maternity/paternity/adoption leave and SPL amounts to 26 weeks or less, he or she will return to the same job. The same job is the one they occupied immediately before commencing maternity/paternity/adoption leave and the most recent period of SPL, on the same terms and conditions of employment as if they had not been absent.
4. If their maternity/paternity/adoption leave and SPL amounts to 26 weeks or more in aggregate, the employee is entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is both suitable and appropriate and on terms and conditions no less favourable.
5. If the employee also takes a period of unpaid parental leave of 4 weeks or less this will have no effect on the employee’s right to return and the employee will still be entitled to return to the same job as they occupied before taking the last period of leave if the aggregate weeks of maternity/paternity/adoption and SPL do not exceed 26 weeks.
6. If a parent takes a period of 5 weeks of unpaid parental leave, even if the total aggregate weeks of maternity/paternity/adoption and SPL do not exceed 26 weeks, the employee will be entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is suitable and appropriate and on terms and conditions no less favourable.

## **Failure to return to Work**

17.1 An employee who has notified the Organisation of their intention to return to work for a minimum of three months for the same or another NHS employer, and fails to do so within 3 months of the ending of the Shared Parental Leave period leave will be liable to refund the whole of the shared parental leave pay, less any statutory shared parental pay received. In cases where the Organisation considers that to enforce this provision would cause undue hardship or distress, the organisation has the discretion to waive the right of recovery.

## **18.** **Special Circumstances and Further Information**

18.1 In certain situations an employee’s rights and requirements regarding SPL and ShPP may change. In these circumstances the organisation will abide by any statutory obligations and NHS Terms and Conditions of service an employee should clarify any issues or queries with their HR Business Partner.

# **19.** **Shared Parental Leave and Pay Progression**

19.1An employee on shared parental leave will progress through their pay step on the date a pay step is due unless a pay-step review meeting has taken place prior to the commencement of leave which confirms the standards for pay progression would not be met. If a meeting cannot be conducted prior to the departure, the pay step should be applied automatically in the employee’s absence.

**Appendix 1 -Equality Impact Assessment**

Equality Impact Assessments will be updated to include statistical data. Equality Impact Assessments will be updated and included in each Human Resource policy, as per the agreed 2022/23 HR EIA review schedule